

Conformed Copy

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

EMERY COUNTY PROJECT

CONTRACT AMONG THE UNITED STATES, EPHRAIM IRRIGATION COMPANY,
COTTONWOOD CREEK CONSOLIDATED IRRIGATION COMPANY AND THE
EMERY WATER CONSERVANCY DISTRICT

THIS CONTRACT, made this 7th day of October, 1960,
in pursuance of the Act of June 17, 1902 (32 Stat. 388), and acts
amendatory thereof or supplementary thereto, particularly the Act
of April 11, 1956 (70 Stat. 105), among THE UNITED STATES OF AMERICA,
herein called the United States, acting in this behalf by the Regional
Director, Region 4, Bureau of Reclamation, Department of the Interior;
the EPHRAIM IRRIGATION COMPANY, a corporation organized and existing
under the laws of the State of Utah, herein called Ephraim; the
COTTONWOOD CREEK CONSOLIDATED IRRIGATION COMPANY, a corporation
organized and existing under the laws of the State of Utah, herein
called Cottonwood; and the EMERY WATER CONSERVANCY DISTRICT, a con-
servancy district organized and existing under the laws of the State
of Utah, herein called the District.

WITNESSETH THAT:

WHEREAS, Ephraim has the right to store 140 acre-feet of
water in five small reservoirs on the headwaters of Cottonwood Creek,
namely, Pete's Hole, Soup Bowl, Academy Mill, Grass Flat, and Slide
Lake, herein called Ephraim's Reservoirs, the locations of which are
shown on the attached Exhibit A, and Ephraim and Cottonwood have, in
the past, agreed on an exchange whereby Ephraim's water is released from

said reservoirs to Cottonwood in exchange for water owned by Cottonwood which is diverted and used by Ephraim, and

WHEREAS, the United States has constructed Joes Valley Dam and Reservoir, a feature of the Emery County Project, downstream from the Ephraim's Reservoirs, and which Project contemplates the use by the United States of said reservoirs for fish and wildlife conservation and other national forest purposes and the exchange of Ephraim's rights in said reservoirs for a permanent water right in Joes Valley Reservoir, and

WHEREAS, the United States and the District entered into that certain contract dated May 15, 1962 (No. 14-06-400-2427), by which the District, among other things, agreed to operate and maintain the Emery County Project works including Joes Valley Reservoir.

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and among the parties hereto as follows:

1. Ephraim hereby assigns and grants to the United States all of its right, title and interest in and to Ephraim's Reservoirs, including special use permits granted by the U. S. Forest Service, and its right to 140 acre-feet of water annually evidenced by water right applications Nos. 8634 and 13221 on file in the State Engineer's office, State of Utah.

2. The United States and the District hereby grant to Ephraim the perpetual right to use 140 acre-feet of water annually from Joes Valley Reservoir; provided, that during any year that inflow into Ephraim's Reservoirs is less than 140 acre-feet, Ephraim rights

in Joes Valley Reservoir shall be limited to the actual inflow into Ephraim's Reservoirs. Such water will be released by the United States or the District, whichever is operating the Emery County Project, at a rate and at such times as requested by Cottonwood to satisfy exchange requirements with Ephraim; provided, that change of release rates shall not be required more often than once each week. Ephraim will not be required to pay construction costs for the right to use 140 acre-feet of water from Joes Valley Reservoir granted by this contract. Such water right shall be the sole property of Ephraim and shall be available for use by it to exchange with Cottonwood direct flow right at the Ephraim Tunnel.

3. Ephraim agrees to pay the United States or District, whichever is operating the Emery County Project, on or before January 1 of the first year after execution of this contract and on or before January 1 of each year thereafter the sum of One Hundred Dollars (\$100.00), as its share of the annual operation and maintenance costs of Joes Valley Reservoir. It is agreed that the \$100.00 operation and maintenance annual charge shall be adjusted each five years from the anniversary date of this contract proportionate to the change that has occurred during the same five-year period in the cost of operating and maintaining Joes Valley Reservoir as certified by the District.

4. Ephraim agrees that adequate gages will be maintained to measure inflow into the Ephraim Tunnel.

5. Ephraim's right to water from Joes Valley Reservoir is on an annual exchange basis with no holdover rights in Joes Valley

Reservoir beyond the current irrigation season.

6. It is agreed that the project operator shall not deliver water from Joes Valley Reservoir under the exchange herein described if Ephraim is delinquent in the payment of operation and maintenance charges required under this contract.

7. Cottonwood agrees to exchange its direct flow water for water granted Ephraim by this agreement in lieu of water from Ephraim's Reservoirs.

8. Ephraim, Cottonwood and the District warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Ephraim, Cottonwood, or the District for the purpose of securing business. For breach or violation of this warranty the United States shall have the right to annul this contract without liability.

9. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part in this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

10. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof or interest therein,

shall be valid until approved by the Regional Director, or his duly authorized representative.

11. (a) Any notice or payment to be made to the United States shall be delivered or mailed, postage prepaid, to the Regional Director, Region 4, Bureau of Reclamation, 125 South State Street, P. O. Box 11568, Salt Lake City, Utah 84111. Any notice or payment to be made to the District shall be delivered or mailed, postage prepaid, to the Emery Water Conservancy District, Castle Dale, Utah 84513. Any notice to be given to Ephraim shall be delivered or mailed, postage prepaid, to the Ephraim Irrigation Company, Ephraim, Utah 84627. Any notice to be given to Cottonwood shall be mailed, postage prepaid, to the Cottonwood Creek Consolidated Irrigation Company, Castle Dale, Utah 84513.

(b) The designation of the addressee or the address given above may be changed by notice given in the same manner as provided in this article for other notices.

IN WITNESS WHEREOF, the parties have hereto signed their

names the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ Ellis L. Armstrong
Acting Regional Director, Region 4
Bureau of Reclamation

EPHRAIM IRRIGATION COMPANY

ATTEST:

/s/ Leslie L. Madson
Secretary
(SEAL)

By /s/ Afton C. Larsen
President

COTTONWOOD CREEK CONSOLIDATED
IRRIGATION COMPANY

ATTEST:

/s/ Mark Humphrey
Secretary
(SEAL)

By /s/ Oral Eugene Johansen
President

EMERY WATER CONSERVANCY DISTRICT

ATTEST:

/s/ Mark Humphrey
Secretary
(SEAL)

By /s/ Oral Eugene Johansen
President